

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company, the Road District No. 3 of :
Wabash County, and the State of Illinois, Department of :
Transportation. :
: T02-0103
Stipulated Agreement regarding improving public safety at the TR :
96 highway-rail grade crossing of the Company's tracks located :
near the City of Mount Carmel, Wabash County, Illinois, :
designated as crossing DOT 724 838J, milepost 146.98A. :
:

SUPPLEMENTAL ORDER

By the Commission:

On November 7, 2002, the Illinois Commerce Commission ("Commission") entered its Order in this matter that required, among other things, the Norfolk Southern Railway Company ("NS") to install automatic flashing light signals and gates controlled by constant warning time circuitry at the TR 96 crossing near Mt. Carmel, Wabash County, Illinois. The installation was to be completed within one (1) year from the date of this Order.

On October 14, 2003, the NS filed its Supplemental Petition requesting an extension of time to and including May 7, 2004, within which to complete the warning device installation as required by the original Order. The NS further states that the Commission approved the warning device installation plans by entering X-Resolution 11960 on March 17, 2003. On March 29, 2003, the Illinois Department of Transportation ("IDOT") approved the project plans for the installation at TR 96. At the time of the aforementioned approvals, it was known that power would be needed for the warning devices and that none was available at the site. In June 2003, a supervisor in the NS Communications and Signals Department visited the site and contacted Mt. Carmel Public Utility ("MCPU"), the local power company that will be supplying the power drop for the warning devices, about obtaining such power. When MCPU reviewed its records, it found it did not have sufficient property rights to reach the warning device site, and since then, has been unable to obtain the needed property rights.

The NS has now sought input and assistance from the Commission's Rail Safety Section and IDOT about this problem, but the NS will not be able to meet the November 7, 2003, deadline for completing the signal installation. Should a resolution be found quickly, the NS believes that a six (6) month extension of time will permit it to complete its work at the TR 96 crossing. If the resolution takes more than six months, the NS may again need to seek an additional

extension of time from the Commission for the completing its work. The NS understands from discussions with the parties to the case that a resolution to the property issue might take longer and that the Commission may, in the alternative, wish to extend this matter indefinitely.

Staff has reviewed the Supplemental Petition and does not agree that a Supplemental Order be entered extending this matter indefinitely. Instead, staff recommends that a one (1) year extension of time should be sufficient to complete the work as required by the original Order. Staff has been in contact with the parties and believes that the matter might be resolved in short Order once the Wabash County State Attorney's Office reviews documents found by the County Engineer pertaining to the establishment of the roadway in question and of the width of right of way for the roadway.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction of the parties hereto and the subject matter herein;
- 2) The recitals of fact as set forth in the prefatory portion of this Supplemental Order are true and correct and are hereby adopted as findings of fact;
- 3) An extension of time to and including November 7, 2004, should be granted to the NS within which to complete the work as required by the original Order dated November 7, 2002;
- 4) The time for the submission of bills should also be extended to coincide with the extension of time for the completion of the installation of the warning devices at the TR 96 crossing;
- 5) All terms and conditions of the original Order are hereby affirmed and shall remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an extension of time to and including November 7, 2004, be, and it is hereby, granted to the Norfolk Southern Railway Company within which to complete the warning device installation as required by the original Order date November 9, 2002.

IT IS FURTHER ORDERED that all bills for expenditures related to the installation of the automatic flashing light signals and gates at the TR 96 crossing, authorized to be reimbursed from the Grade Crossing Protection Fund, shall be submitted to Fiscal Control Unit of the Illinois Department of Transportation's Bureau of Local Roads and Streets, 2300 South Dirksen Parkway, Springfield,

Illinois, 62764. The Department shall submit a copy of all bills received to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from the Norfolk Southern Railway Company shall be clearly marked "Final Bill". All bills shall be submitted no later than twelve (12) months from the date of completion as set forth in this Supplemental Order. The Department shall, at the end of the 12th month from the Commission's Supplemental Order completion date, de-obligate all residual funds accountable for the cost of the warning device installations for this project.

IT IS FURTHER ORDERED that all terms and conditions of the original Order dated November 7, 2002, are hereby affirmed except as herein modified.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final Order of the Commission subject to Administrative Review Law.

By Order of the Commission this 5th day of November, 2003.

Edward C. Husley ₂

Chairman

JUDGE
SECTION CHIEF <i>MES</i>
<i>[Signature]</i> ORDERS SUPERVISOR